LIBRARY
ME COURT. U. S.

Supreme Court, U.S.
FILED
OCT 31 1968
JOHN F. DAVIS, CLERK

No. 250

In The

SUPREME COURT OF THE UNITED STATES

October Term 1968

JOHN E. COYNE,
Petitioner-Appellant,
vs.
DONALD WATSON, SHERIFF,
CLERMONT COUNTY, OHIO,
Respondent-Appellee.

RESPONDENT-APPELLEE'S BRIEF OPPOSING WRIT OF CERTIORARI

ROBERT A. JONES
Prosecuting Attorney,
Clermont County, Ohio
33 North Market Street
Batavia, Ohio 45103
Attorney for Respondent-Appellee

COURT INDEX PRESS, INC. — Law Printers — 809 Walnut Street, Cincinnati, Ohio 45202

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
ARGUMENT	1
(1) The words "two eye witnesses informed Deputy Sheriff, Arthur Guard," contained in an affidavit for search warrant do meet the requirements of the Constitution of the United States and the Constitution of the State of Ohio as well as the requirements of the Revised Code of the State of Ohio, Section 2933.23, and the defendant's constitutional rights, privileges and guarantees are not violated when an affidavit for a search warrant is based on information received from two eye witnesses	1-2
(2) The privileges and guarantees of the Fourth and Fourteenth Amendments of the United States Constitution are not abridged when an affidavit for search warrant does not allege the reliability or credibility of eye witnesses	9
(3) Upon a complete reading of the search warrant it does indicate when the affiant obtained the information upon which the affidavit for search warrant was based	11
(4) The National Machine Gun Act of June 26, 1934 (Title 26, United States Code, Section 5841 and 5851) are not analogous to the Ohio State Statutes requiring machine gun permits and Haynes vs. United States' decisions would not be applicable	13
CONCLUSION	15
APPENDIX A	16

TABLE OF CASES

	Page
Brinegar v. United States, 338 U.S. 160	8
Draper v. United States, 358 U.S. 307	8
Haynes v. United States, Supreme Court Case No. 236, October Term 1967	14
Ker v. California, 374 U.S. 23	8
State of Ohio v. Rogers, 27 O. O. (2d) 105	8-9
U. S. v. Bozza, 365 F. 2d 206	11
United States v. Haskins, 345 Fed. 2d 111	6-7
United States v. Romano, 241 F. Supp. 933	6
United States v. Ventresca, 380 U.S. 102	3-4, 6

TABLE OF OTHER AUTHORITIES

Section 14, Article I, Bill of Rights, Ohio Constitution	3, 8, 15
Section 2923.04, Ohio Revised Code	2, 12, 13
Section 2933.23, Ohio Revised Code	1, 2-3, 7, 15
Fourth Amendment, U. S. Constitution	3, 4, 8, 9, 15
Fourteenth Amendment, U. S. Constitution	9
Title 26, United States Code, Sections 5841 and 5851	13

In The

Supreme Court of the United States

October Term 1968

No. 250

JOHN E. COYNE,
Petitioner-Appellant,

vs.

DONALD WATSON, SHERIFF,
CLERMONT COUNTY, OHIO,
Respondent-Appellee.

RESPONDENT-APPELLEE'S BRIEF

STATEMENT OF FACTS

The Statement of Facts as set forth in Appellant's Brief are correct statements of the facts pertaining to the proceedings before this Court.

ARGUMENT

(1) The words "two eye witnesses informed deputy sheriff, Arthur Guard", contained in an affidavit for search warrant do meet the requirements of the Constitution of the United States and the Constitution of the State of Ohio as well as the requirements of the Revised Code of the State of Ohio, Section 2933.23, and the defendant's constitutional rights, privileges and guarantees are not violated when an affidavit for a search

warrant is based on information received from two eye witnesses.

The Petitioner-Appellant contends that the words "two eye witnesses informed Deputy Sheriff, Arthur Guard", contained in the affidavit for search warrant, do not meet the requirements of the Constitution of the United States and the Constitution of the State of Ohio and the specific requirements of the Revised Code of the State of Ohio, Section 2933.23, that the affiant shall state the facts upon which such belief is based in the affidavit for search warrant.

The affidavit for the search warrant stated that the Defendant, John E. Coyne, has in his possession one machine gun in violation of Section 2923.04 of the Revised Code of the State of Ohio, and stated that the affiant believed and had good cause to believe that such machine gun was concealed in or about the Defendant's premises, a junk yard located at the intersection of Twelve Mile Road and State Route 132 and the buildings, old cars and junked cars situate thereon in Ohio Township, Clermont County, Ohio. Affiant further stated in his affidavit for search warrant "that facts upon which such belief is based are two eye witnesses informed Deputy Sheriff Arthur Guard."

Section 2933.23 of the Revised Code of the State of Ohio provides as follows:

> "A warrant for search shall not be issued until there is filed with the judge or magistrate an affidavit particularly describing the house or place to be searched, the person to be seized, the things to be searched for and seized, and alleging substantially the offense in relation thereto, and that the complainant believes and has good cause to believe that such things are there concealed, and he shall state the facts upon which such belief is based. The judge or magistrate may demand other and further evidence before issuing such warrant. If the judge or magistrate is satisfied

> that grounds for the issuance of a warrant exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched."

The Fourth Amendment to the Constitution of the United States provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section 14, Article I, Bill of Rights, Constitution of Ohio makes similar provision in almost identical language and reads as follows:

> "The right of the people to be secure in their person, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized."

Both the federal and state constitutions require in part that no search warrant shall issue but upon probable cause supported by oath or affirmation. Revised Ohio Code Section 2933.23 adds the further requirement that the affidavit state the facts upon which such belief is based.

In *United States* v. *Ventresca,* 380 U.S. 102, the Supreme Court of the United States had before it for consideration the sufficiency of an affidavit for a search warrant, in which the affidavit was based on:

"observations made by me, and based upon information received officially from other investigators attached to the alcohol and tobacco tax division assigned to this investigation, and reports orally made to me describing the results of their observations and investigation."

The Court of Appeals in holding the warrant insufficient reasoned that the affidavit did not specifically state in so many words that the information obtained was based upon the personal knowledge of the affiant or other reliable investigators. The Court of Appeals had further reasoned "that all the information recited in the affidavit might conceivably have been obtained by investigators other than the affiant, and it could not be certain that the information of these other investigators was not in turn based upon hearsay received from unreliable informants rather than their own personal observations."

The Supreme Court reversed the Court of Appeals and upheld the affidavit as a sufficient basis for a search warrant. In so holding the Court pointed out that the Fourth Amendment commands are practical and not abstract and that affidavits for search warrants "must be tested and interpreted by magistrates in courts in a common sense and realistic fashion," if constitutional policy is to be served. It is noted that such affidavits are usually drafted by non lawyers in the haste of criminal investigations; and that the technical requirements of common law pleading have no proper place in this area. The court specifically points out that it wants to encourage use of search warrants and that if there is a grudging or a negative attitude by reviewing courts, it will discourage police officers in obtaining search warrants.

The Court further states:

"this is not to say that probable cause can be made out by affidavits which are purely conclusory, stating

> only the affiants or informers believe that probable cause exist without detailing any of the 'underlying circumstances' upon which that belief is based. Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police, however where these circumstances are detailed, where reason for crediting the source of information is given and when a magistrate has found probable cause the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants."

Applying the foregoing essentials to the case now before this Court, the circumstances are detailed in the affidavit in that it clearly states that the affiant obtained his information in regard to the concealed machine guns from eye witnesses, and further indicates the reason for crediting the source is that they were eye witnesses. In addition to these factors the County Court Judge at the time he received the affidavit for Search Warrant from the deputy sheriff had additional information given to him as County Court Judge, which information consisted of the statement by Deputy Sheriff, Arthur Guard, that witnesses told him, Arthur Guard, that they saw John E. Coyne in the possession of a machine gun on his premises at the intersection of Twelve Mile Road and State Route 132. From the statement of facts in the affidavit and the recital of facts given the County Court Judge at the time the affidavit was given to him, the County Court Judge was satisfied that grounds existed for the issuance of the search warrant and that there was probable cause to believe that they existed.

The County Court Judge must exercise his own judgment as to the facts which constitute probable cause, and this judgment should be conclusive unless arbitrarily exercised. The mere perfunctory recital of the words credible, or that the information was reliable, would not in reality have been a significant addition to facts already before the County Court Judge for his determination in respect to probable cause. To invalidate the search warrant now before this court would be interpreting the affidavit in a hypertechnical, rather than a common sense, manner.

In the case of the *United States* v. *Romano*, 241 F. Supp. 933 the Court had before it for consideration the sufficiency of an affidavit under which a search warrant was issued. The facts stated in the affidavit as grounds for issuance of the search warrant were as follows:

> (1) Information given anonymously to the affiant that the aforementioned materials are being held on said premises.
>
> (2) The detection of a strong odor of mash outside the premises by the affiant.

The Court, citing the case of *U. S.* v. *Ventresca*, 380 U. S. 102, held that in accordance with the principles set forth in the *Ventresca* case, the above affidavit, although meager, sets forth facts sufficient to establish probable cause and to authorize the commissioner to issue a search warrant. The Court reiterated the Supreme Court's mandate in *Ventresca*, "that affidavits for search warrants must be tested and interpreted by magistrates in courts in a common sense and realistic fashion and the courts shall not invalidate a warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner."

In the case of *United States* v. *Haskins*, 345 Fed. 2d 111, the Sixth Circuit Court of Appeals held:

> "In determining whether the United States Commissioner has properly issued a search warrant, we must first recognize that he must exercise his own judgment as to whether the facts in the affidavit constitute probable cause; and his determination is conclusive unless his judgment is arbitrarily exercised. There is, in other words, a presumption that a commissioner has properly performed his duty."

In the instant case the County Court Judge issued the search warrant pursuant to Section 2933.23 of the Revised Code of the State of Ohio, upon the affidavit for search warrant filed with him and such additional information as he obtained from the affiant. In his judgment he had before him sufficient facts to constitute probable cause for the issuance of the search warrant to search the premises of the defendant-appellant, John E. Coyne, for a machine gun.

Although the affidavit for a search warrant states that the facts upon which this belief is based are "two eye witnesses informed Deputy Sheriff Arthur Guard," the Judge issuing the search warrant substantiated the information contained in the search warrant, and ascertained that the eye witnesses had seen a machine gun in the possession of the defendant. In reading the affidavit for search warrant in its entirety, no one reading the said affidavit and applying common sense and a realistic interpretation upon the words contained therein, could arrive at any other conclusion than that the two eye witnesses informed the Deputy Sheriff that they had seen the machine gun in the possession of the defendant.

The affidavit for search warrant must be read in its entirety and no one reading said affidavit can conscientiously say it is purely conclusory, nor that it does not present *circumstances* upon which the magistrate issuing the search

warrant would be presented with facts constituting probable cause.

The criteria for all the cases on searches and seizures are founded in the constitutional provisions of the Fourth Amendment to the Constitution of the United States and in Article I, Section 14 of the Bill of Rights to the Constitution of Ohio. Each case involving a search and seizure, or the issuance of a warrant for the search of property pursuant to the Ohio Revised Code, must stand on its own merits as to being a reasonable search and seizure under the above constitutional provisions. Each of the cases cited in the plaintiff's memorandum in support of jurisdiction and his motion to certify was based upon facts completely alien to the facts now before this Court. In *Ker* v. *California,* 374 U. S. 23, the Supreme Court stated: "there is no formula for the determination of reasonableness of the search, but each case must be decided on its own facts and circumstances."

The constitutional requirement for search warrants is that there be probable cause to believe that the items sought are present when the search is conducted.

> "In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations in everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v. *United States,* 338 U. S. 160.
>
> "Probable cause exist where the facts and circumstances within their knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that offense has been or is being committed." *Draper* v. *United States,* 358 U. S. 307.

In the case of *State of Ohio* v. *Rogers,* 27 O.O. (2d) 105 the Court stated:

> "Probable cause exists where the facts and circumstances within the knowledge of the officer making the arrest or search and of which he had reasonable trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that offense has been or is being committed. A search and seizure is not unreasonable even though the officer has no previous knowledge of the violation of the law, provided he acts in good faith and upon such information as induces honest belief that the person in charge of the automobile is in the act of violating the law."

The facts and circumstances in the instant case were that two eye witnesses informed the Deputy Sheriff that they saw a machine gun in the possession of the defendant, John E. Coyne, on his premises at the intersection of Twelve Mile Road and State Route 132. Such facts and circumstances were sufficient to warrant a prudent man in believing the items sought were present, and further were sufficient to induce an honest belief that the items sought were present. These facts and circumstances as set forth in the affidavit and further detailed and supplemented by information related to the County Court Judge who issued the search warrant were sufficient to evidence, that there was probable cause to believe grounds for the issuance of a search warrant existed.

(2) The privileges and guarantees of the Fourth and Fourteenth Amendments of the United States Constitution are not abridged when an affidavit for search warrant does not allege the reliability or credibility of eye witnesses.

As set forth in the Statement of Facts the Petitioner-Appellant, through his attorney, filed a motion in the County Court of Clermont County, Ohio on August 27, 1965, to quash the search warrant, and likewise on Decem-

ber 28, 1965, in the Court of Common Pleas of Clermont County, Ohio, the Petitioner-Appellant, through his attorney, filed a motion to suppress the evidence. On neither of these occasions did the Petitioner-Appellant attempt to subpoena the Deputy Sheriff to cross examine him as to the reliability or credibility of the two eye witnesses who had informed him that they saw a machine gun in the possession of the Petitioner-Appellant; nor was there any attempt at either proceedings to secure the names of the two eye witnesses in order to subpoena them before the Court to cross examine as to their credibility and reliability.

It is clear from the arguments advanced on behalf of the Petitioner-Appellant in his brief before this Court that he is under the false assumption that anyone who responds to their civic duty to assist and inform the law enforcement agencies is, in the vernacular of the underworld, an informer, whom the Petitioner-Appellant, through his attorney, in his brief filed in this Court, considers "an object of doubt, mistrust and suspicion . . . one who acts under powerful motives — personal gain — revenge — hate and sometimes fear."

It is small wonder that in this day and age of classification that reputable, conscientious civic minded citizens, who recognize and fulfill their civic duties and moral obligations to society, are becoming more and more reluctant to fulfill these duties and obligations in aiding law enforcement agencies, when they are faced with being classified as repugnant people, objects of doubt, mistrust, and suspicion.

Fortunately, we still have conscientious citizens who are willing to sacrifice such a classification in order to fulfill their civic obligations; and fortunately we have local County Court Judges, Common Pleas Judges, State Court Appeal Judges, State Supreme Court Justices, Federal District

Judges, and the United States Court of Appeals Judges, who will recognize the credibility of such people unless there is evidence to the contrary.

There is no magic in the use of the word "reliable", to-wit: "two *reliable* eye witnesses informed Deputy Sheriff, Arthur Guard" would not alter the sufficiency of this affidavit for search warrant, if in fact these eye witnesses were not credible or reliable.

In *U. S.* v. *Bozza,* 365 F. 2d 206, decision rendered August 1, 1966 in the United States Court of Appeals, Second Circuit, stated:

> "Affidavit for search warrant in which officer recited that he had received information from an informer was not defective for failure to state that the informer was a previously reliable informer since officer presented other information which presented far stronger reason for believing informant's story was true."

In the instant case, not just one citizen related to the deputy sheriff that he had seen the Petitioner-Appellant in the possession of a machine gun, but two citizens related that they had seen the Petitioner-Appellant in the possession of a machine gun. They related to the officer not what someone else had told them, nor what they had heard from some other source, but what they had actually seen with their own eyes. Unless you assume that we are a nation of prevaricators, I know of no one who would not conclude that there was probable cause for the issuing of this search warrant.

(3) Upon a complete reading of the search warrant it does indicate when the affiant obtained the information upon which the affidavit for search warrant was based.

The question of the element of time as to when the Deputy Sheriff obtained the information from the two eye

witnesses was never challenged by the Petitioner-Appellant in the motion to quash the search warrant in the County Court, the motion to suppress the evidence in the Court of Common Pleas of Clermont County, Ohio, the appeal to the Gourt of Appeals of Clermont County, the appeal to the Supreme Court of the State of Ohio, nor in the petition for writ of habeas corpus in the United States District Court, Southern District of Ohio, Western Division. This question was raised by the Honorable Judge Hogan in rendering his decision on the habeas corpus petition. Likewise, having raised the question, Judge Hogan answered the question by saying the language of the search warrant in requesting the night search substantiated the fact that the Deputy Sheriff had just been informed that the Petitioner-Appellant had the machine gun in his possession.

Furthermore, a complete reading of the affidavit for search warrant further bears out this contention in that the affidavit recites "that on or about the 16th day of August, 1965, in the County of Clermont, one John C. Coyne *has* in his possession one machine gun, in violation of Section 2923.04."

Just as the Petitioner-Appellant had an opportunity to question the credibility of the eye witnesses on his motion to quash the affidavit for search warrant in the County Court of Clermont County, Ohio and upon his motion to suppress the evidence in the Court of Common Pleas, Clermont County, Ohio, he had an equal opportunity to question the time as to when the Deputy Sheriff obtained his information for the search warrant both on his motion to quash the search warrant in the County Court and on the motion to suppress the evidence in the Court of Common Pleas. Reading the affidavit for search warrant in its entirety, it is the contention of the Respondent-Appellee that it does meet the test of probable cause for

the issuing of the search warrant, both as to credibility of the two eye witnesses and as to the time element of belief that the Petitioner-Appellant had the machine gun in his possession at the time that the affidavit for search warrant was obtained.

(4) The National Machine Gun Act of June 26, 1934 (Title 26, United States Code, Section 5841 and 5851) are not analogous to the Ohio State Statutes requiring machine gun permits and Haynes vs. United States' decisions would not be applicable.

The Petitioner, John E. Coyne, was convicted under Section 2923.04 of the Revised Code of the State of Ohio, which section is a part of the criminal code of the State of Ohio and was adopted under the police powers of the sovereign State of Ohio. The Sections of the Revised Code of the State of Ohio pertaining to definition, registration and sale of machine guns are fully set forth in Appendix A.

Section 2923.04 of the Revised Code of the State of Ohio which provides in part as follows:

> "No person shall own, possess, transport, have custody of, or use a machine gun, light machine gun or submachine gun, unless he first procures a permit therefor from and at the discretion of the adjutant general, or having such permit, use or consent to the use by another of such weapon in an unlawful manner. * * *".

In exercising the police powers retained by the states, the legislature of the State of Ohio, within their wise discretion, adopted Section 2923.03 through Section 2923.-05 of the Revised Code of the State of Ohio in order to protect the people of the state of Ohio against such weapons

falling into the hands of criminals who employ these weapons for unlawful purposes.

On the other hand the National Firearms Act, as noted by the Supreme Court in its decision in *Haynes* v. *United States,* Case No. 236, October Term, 1967, is an interrelated statutory system for the taxation for certain classes of firearms, and is not adopted under the police powers for the protection of the people.

Whereas, the National Firearms Act requires finger printing, photographing and a certificate of a local chief of police as a prerequisite for registering a firearm under the National Firearms Act; and in addition thereto provides a penalty for the possession of a firearm which has (at any time) been transferred or made in violation of the act's provision; the State law under which the Petitioner was convicted requires only an accurate description of the weapon and the name of the person from whom it was obtained, the name of the person to have custody thereof and the place of residence of the applicant or custodian, together with the posting of a $5000.00 bond conditioned to save the public harmless from the unlawful use of such weapon. Unlike the National Firearm Act the Ohio State statutes requiring the registration of machine guns does not also make it a punishable offense to possess a machine gun which has not at any time been registered, therefore the requirement of the State statute requiring a person who is purchasing a machine gun to obtain a permit from the adjutant general does not require him to provide information incriminating to himself.

As the Court noted in *Haynes* v. *United States*:

> "The registration requirement is thus directed principally at those persons who have obtained the possession of a firearm without complying with the acts other requirements and who therefore are immediately threatened by criminal prosecution under Sections 5851 and 5861".

This is not true under Ohio State statutes which requires registration at the time of obtaining the machine gun and provides no penalty for purchasing a machine gun which has not previously been registered.

The statute under which the Petitioner was convicted is not analogous to the National Firearms Act, and does not require the applicant to give any information which may be incriminating to him and is therefore not in violation of the Constitution of the United States.

CONCLUSION

The Appellee respectfully submits that the affidavit for search warrant and the ultimate issuance of the search warrant by the Judge of the County Court of Clermont County, along with the search of the Petitioner-Appellant's premises, does not constitute an unlawful search and seizure of the Defendant's property, nor did such action violate, the Appellant's constitutional rights as guaranteed by the Fourth Amendment of the Constitution of the United States and by Article I, Section 14 of the Constitution of Ohio, nor was there a failure to satisfy the requirements of Section 2933.23 of the Revised Code of the State of Ohio.

Petitioner-Appellant's appeal should be denied and the conviction affirmed.

Respectfully submitted,

ROBERT A. JONES
Prosecuting Attorney,
Clermont County, Ohio
33 North Market Street
Batavia, Ohio 45103

Attorney for Respondent-Appellee

APPENDIX A

Section 2923.03 Revised Code of the State of Ohio

(A) As used in section 2923.04 to 2923.06, inclusive, of the Revised Code, machine gun, a light machine gun, or a submachine gun is any firearm which shoots automatically, or any firearm which shoots more than eighteen shots semi-automatically without reloading.

(B) As used in this section:

(1) Automatically means that class of firearms which, while the trigger on the firearm is held back, continues to fire sucessive shots.

(2) Semiautomatically means that class of firearm which discharges one shot only each time the trigger is pulled, no manual reloading operation being necessary between shots.

Section 2923.04 Revised Code of the State of Ohio

Machine Gun Permit.

No person shall own, possess, transport, have custody of, or use a machine gun, light machine gun or submachine gun, unless he first procures a permit therefor from and at the discretion of the adjutant general, or having such permit, use or consent to the use by another of such weapon in an unlawful manner. The adjutant general shall keep a complete record of each permit so issued. A separate permit shall be obtained for each gun so owned, possessed, or used. The adjutant general shall require each applicant for such permit to give an accurate description of such weapon, the name of the person from whom it was obtained, the name of the person to have custody thereof, and the place of residence of the applicant and the custodian. Before obtaining such permit each applicant shall give bond to this state, to be approved by the adjutant general, in the sum of five thousand dollars, conditioned to save the public harmless by reason of any unlawful use

of such weapon while under the control of another with his consent; and any person injured by such improper use may have recourse on said bond. This section does not affect the right of the national guard of Ohio, sheriffs, regularly appointed police officers of municipal corporations, regularly elected constables, wardens and guards of penitentiaries, jails, prisons, penal institutions, or financial institutions maintaining their own police force, and such special officers as are authorized to possess and use such weapons when on duty.

Whoever violates this section shall be imprisoned not less than one nor more than ten years.

Section 2923.05 of the Revised Code of State of Ohio

Sale of Machine gun.

No person shall sell, barter, or give to another a machine gun, light machine gun, or submachine gun, without first requiring exhibition of the permit provided by section 2923.04 of the Revised Code, and using the information contained in such permit to make a complete record of such transaction, containing the date of the permit and of the transfer together with the names of the parties thereto, which record shall be preserved by such transferor for a period of five years.

Whoever violates this section shall be imprisoned not less than one nor more than five years.

Section 2923.06 of the Revised Code of the State of Ohio

War trophies.

Sections 2923.03 to 2923.05, inclusive, of the Revised Code do not apply to captured war trophies which are kept for museum purposes and which are in unserviceable condition.